# MONTANA LEGISLATIVE HISTORY

Chapter 560 1979

Bill H 716 S _____ Original bill & history ✓ C

| H. Committee on Natural Resources | | | S. Committee on Natural Resources | | |
|---|---|---|---|---|---|
| Hearing Date(s) | Feb 16 | ✓ C | Hearing Date(s) | Mar 14 | ✓ C |
| | Feb 18 | ✓ C | | Mar 15 | ✓ C |
| | | C | | | C |
| | | C | | | C |
| Date Out | Feb 18 | ✓ C | | Mar 20 | ✓ C |

BEST COPY AVAILABLE

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____ Report _____

CHAPTER NO. 560

HOUSE BILL NO. 716

INTRODUCED BY BLAYLOCK, KEMMIS, BARDANOUVE, GERKE, DUSSAULT, LORY, McBRIDE, COONEY, JERGESON, SHELDEN, KESSLER, REICHERT

BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

IN THE HOUSE

| | |
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| February 10, 1979 | Introduced and referred to Committee on Natural Resources. |
| February 19, 1979 | Intent statement attached. |
| | Committee recommend bill do pass as amended. Report adopted. |
| February 21, 1979 | Printed and placed on members' desks. |
| February 22, 1979 | Second reading, do pass. |
| February 23, 1979 | Considered correctly engrossed. |
| | Third reading, passed. Transmitted to second house. |

IN THE SENATE

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|---|---|
| February 23, 1979 | Introduced and referred to Committee on Natural Resources. |
| March 21, 1979 | Committee recommend bill be concurred in as amended. Report adopted. |
| | Statement of Intent as amended be adopted. |
| March 23, 1979 | Second reading, concurred in. |
| March 27, 1979 | Third reading, concurred in as amended. |

IN THE HOUSE

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| March 28, 1979 | Returned from second house. Concurred in as amended with Intent statement. |
| March 31, 1979 | Second reading, amendments adopted. |
| April 2, 1979 | Third reading, amendments adopted. Sent to enrolling. |
| | Reported correctly enrolled. |

HOUSE BILL NO. 716

INTRODUCED BY Kennis Bachmeier Luke Duncan Tom McCue Blaylock Cooney

BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES Jergeson Stelder Keedy Richard

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE CLEAN AIR ACT OF MONTANA TO GRANT THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES AUTHORITY TO ADOPT RULES REQUIRED BY FEDERAL LAW; TO PERMIT FEES TO BE ASSESSED FOR ENVIRONMENTAL IMPACT ANALYSIS; TO PROVIDE NOTICE AND HEARING IN ACCORDANCE WITH THE MONTANA ADMINISTRATIVE PROCEDURE ACT AND REDUCE TIME REQUIRED FOR NOTIFICATION TO THE AIR POLLUTION ADVISORY COUNCIL; TO PERMIT FEES TO BE ASSESSED FOR REVIEWING PERMIT APPLICATIONS AND IMPLEMENTING AND ENFORCING PERMIT REQUIREMENTS; TO PROVIDE THAT NOTICE MAY BE GIVEN PERSONALLY OR BY MAIL; TO REVISE AND CLARIFY THE ROLE OF LOCAL GOVERNMENT IN THE CONTROL OF AIR CONTAMINATION; TO ESTABLISH NONCOMPLIANCE PENALTY FEES; AND TO INCREASE THE MAXIMUM CIVIL PENALTY FROM $1,000 TO $25,000; AMENDING SECTIONS 75-2-111, 75-2-112, 75-2-205, 75-2-211, 75-2-301, 75-2-401, AND 75-2-413, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-2-111, MCA, is amended to read:

"75-2-111. Powers of board. The board shall:



(1) adopt, amend, and repeal rules ~~implementing and consistent with~~ for the administration, implementation, and enforcement of this chapter and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant thereto;

(2) hold hearings relating to any aspect of or matter in the administration of this chapter at a place designated by the board. The board may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who shall be present at all hearings and take full stenographic notes of all proceedings thereat, transcripts of which will be available to the public at cost.

(3) issue orders necessary to effectuate the purposes of this chapter;

(4) by rule require access to records relating to emissions;

(5) by rule adopt a schedule of fees required for permits under this chapter."

Section 2. Section 75-2-112, MCA, is amended to read:

"75-2-112. Powers and responsibilities of department. (1) The department is responsible for the administration of this chapter.

(2) The department shall:

(a) by appropriate administrative and judicial proceedings, enforce orders issued by the board;

(b) secure necessary scientific, technical, administrative, and operational services, including laboratory facilities, by contract or otherwise;

(c) prepare and develop a comprehensive plan for the prevention, abatement, and control of air pollution in this state;

(d) encourage voluntary cooperation by persons and affected groups to achieve the purposes of this chapter;

(e) encourage local units of government to handle air pollution problems within their respective jurisdictions on a cooperative basis and provide technical and consultative assistance for this. If local programs are financed with public funds, the department may contract with the local government to share the cost of the program. However, the state share may not exceed 30% of the total cost.

(f) encourage and conduct studies, investigations, and research relating to air contamination and air pollution and their causes, effects, prevention, abatement, and control;

(g) determine, by means of field studies and sampling, the degree of air contamination and air pollution in the state;

(h) make a continuing study of the effects of the emission of air contaminants from motor vehicles on the





quality of the outdoor atmosphere of this state and make recommendations to appropriate public and private bodies with respect to this;

(i) collect and disseminate information and conduct educational and training programs relating to air contamination and air pollution;

(j) advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate and interlocal agencies, the United States, and any interested persons or groups;

(k) consult, on request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control thereof concerning the efficacy of this device or system or the air pollution problems which may be related to the source, device, or system. Nothing in this consultation relieves a person from compliance with this chapter, rules in forc under it, or any other provision of law.

(l) accept, receive, and administer grants or other funds or gifts from public or private agencies, including the United States, for the purpose of carrying out this chapter. Funds received under this section shall be deposited in the state treasury to the account of the department.

(3) The department may assess fees for the analysis of

the environmental impact of an application to redesignate the classification of any area, except those areas within the exterior boundaries of a reservation of a federally recognized Indian tribe, under the classifications established by 42 U.S.C. 7470 through 7479 (prevention of significant deterioration of air quality). The determination of whether or not a fee will be assessed is to be on a case-by-case basis."

Section 3. Section 75-2-205, MCA, is amended to read:

"75-2-205. Public hearings on rules. No rule and no amendment or repeal thereof may take effect except after public hearing on due notice and after the advisory council has been given, at ~~least 30 days before~~ the time of publication, of the proposed text to comment thereon. ~~The~~ Such notice shall be given ~~by public advertisement not less than 20 or more than 30 days before the date set for the public hearing~~ and any hearing conducted in accordance with the provisions of the Montana Administrative Procedure Act and rules made pursuant thereto."

Section 4. Section 75-2-211, MCA, is amended to read:

"75-2-211. Permits for construction, installation, alteration, or use. (1) The department shall provide for the issuance, suspension, revocation, and renewal of a permit issued under this section.

(2) Not later than 180 days before construction begins





of any machine, equipment, device, or facility which the board finds may directly or indirectly cause or contribute to air pollution or which is intended primarily to prevent or control the emission of air pollutants and not later than 120 days before installation, alteration, or use begins, the owner or operator shall file with the department the appropriate permit application on forms available from the department, and pay to a local government exercising authority under 75-2-301(9) or to the department if such local authority is not exercised a fee sufficient to cover:

(a) the reasonable costs of reviewing and acting upon the application for such permit; and

(b) the reasonable costs of implementing and enforcing the terms and conditions of such permit if the permit is granted. The fee shall be deposited in an earmarked revenue fund to be used by the department for administration of this section.

(3) The department may, for good cause shown, waive ~~the provisions of subsection (2)~~ or shorten the time required for filing the appropriate applications.

(4) The department shall require that applications for permits be accompanied by any plans, specifications, and other information it considers necessary.

(5) An application is not considered filed until the applicant has submitted all information and completed all



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application forms required by subsections (2), (3), and (4). However, if the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(6) Where an application for a permit requires the compilation of an environmental impact statement under the Montana Environmental Policy Act, the department shall notify the applicant in writing within 180 days of the receipt of a filed application, as defined in subsection (5), of the approval or denial of the application. However, where an application does not require the compilation of an environmental impact statement, the department shall notify the applicant in writing within 60 days of the receipt of a filed application, as defined in subsection (5), of the approval or denial of the application. Notification of approval or denial may be served personally or by mail on the applicant or his agent.

(7) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request, within 15 days after the department renders its decision, upon affidavit setting forth the





grounds therefor, a hearing before the board. A hearing shall be held under the provisions of the Montana Administrative Procedure Act.

(8) The department's decision on the application is not final unless 15 days have elapsed and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board."

Section 5. Section 75-2-301, MCA, is amended to read:

"75-2-301. Local air pollution control programs. (1) A municipality or county may establish a local air pollution control program on being petitioned by 15% of the qualified electors in its jurisdiction and, if the program is consistent with this chapter and is approved by the board after a public hearing conducted under 75-2-111, may thereafter administer in its jurisdiction the air pollutio control program which:

(a) provides by ordinance or local law for requirements compatible with, more stringent, or more extensive than those imposed by 75-2-203, 75-2-204, 75-2-211, 75-2-212, and 75-2-402 and rules issued under these sections;

(b) provides for the enforcement of these requirements by appropriate administrative and judicial process; and

(c) provides for administrative organization, staff, financial, and other resources necessary to effectively and efficiently carry out its program.

(2) If the board finds that the location, character, or extent of particular concentrations of population, air contaminant sources, or geographic, topographic, or meteorological considerations or any combination of these are such as to make impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control program, the board may determine the boundaries within which the program is necessary and require it as the only acceptable alternative to direct state administration.

(3) If the board has reason to believe that an air pollution control program in force under this section is inadequate to prevent and control air pollution in the jurisdiction to which the program relates or that the program is being administered in a manner inconsistent with this chapter, the board shall, on notice, conduct a hearing on the matter.

(4) If, after the hearing, the board determines that the program is inadequate to prevent and control air pollution in the jurisdiction to which it relates or that it is not accomplishing the purposes of this chapter, it shall require that necessary corrective measures be taken within a





reasonable time, not to exceed 60 days.

(5) If the jurisdiction fails to take these measures within the time required, the department shall administer within such jurisdiction all of the provisions of this chapter. The department's control program supersedes all municipal or county air pollution laws, rules, ordinances, and requirements in the affected jurisdiction. The cost of the program shall be a charge on the municipality or county.

(6) If the board finds that the control of a particular ~~class of~~ air contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local jurisdiction ~~or may be more efficiently and economically performed at the state level~~ and that the department is better able than the local jurisdiction to control the air contaminant source, it may direct the department to assume and retain control over that ~~class of~~ air contaminant source. No charge may be assessed against the jurisdiction therefor. Findings made under this subsection may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

(7) A jurisdiction in which the department administers its air pollution control program under subsection (5) of this section may, with the approval of the board, establish or resume an air pollution control program which meets the



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requirements of subsection (1) of this section.

(8) A municipality or county may administer all or part of its air pollution control program in cooperation with one or more municipalities or counties of this state or of other states.

(9) A municipality or county that is administering an air pollution control program under this section may exercise the following powers:

(a) The municipality or county may assess and collect noncompliance penalties provided for in [sections 7 through 15] for air contaminant sources under its jurisdiction. All noncompliance penalties collected by the municipality or county pursuant to [sections 7 through 15] shall be deposited in a trust and agency account until a final determination and adjustment are made as provided in [section 10] and amounts are deducted by the municipality or county for costs attributable to implementation of [sections 7 through 15] and for contract costs incurred pursuant to [subsection (3) of section 8], if any. After a final determination is made and additional payments or refunds are made, the remaining penalty money shall be transferred to the general fund of the municipality or county.

(b) The municipality or county may collect permit fees provided for in 75-2-211."

Section 6. Section 75-2-401, MCA, is amended to read:





"75-2-401. Enforcement. (1) When the department believes that a violation of this chapter or a rule made under it has occurred, it may cause written notice to be served personally or by mail on the alleged violator or his agent. The notice shall specify the provision of this chapter or rule alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is received, the person named requests in writing a hearing before the board. On receipt of the request, the board shall hold schedule a hearing.

(2) If, after a hearing held under subsection (1) of this section, the board finds that violations have occurred, it shall either affirm or modify an order previously issued or issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other corrective action it considers appropriate. An order issued as part of a notice or after a hearing may prescribe the date by which the violation shall cease and may prescribe time limits for particular action in preventing, abating, or controlling the emissions. If, after hearing on an order contained in a notice, the board finds that no violation is occurring, it shall rescind the order.

(3) Instead of issuing the order provided for in subsection (1), the department may either:

(a) require that the alleged violators appear before the board for a hearing at a time and place specified in the notice and answer the charges complained of; or

(b) initiate action under 75-2-412 or 75-2-413.

(4) action under 75-2-412 is not a bar to enforcement of this chapter or of rules or orders made under it by injunction or other appropriate remedy. The department may institute and maintain in the name of the state any enforcement proceedings.

~~(4)~~(5) This chapter does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

~~(5)~~(6) In connection with a hearing held under this section, the board may and on application by a party shall compel the attendance of witnesses and the production of evidence on behalf of the parties."

NEW SECTION. Section 7. Persons subject to noncompliance penalties -- exemptions. (1) Except as provided in subsection (2) and subject to collection by a local government pursuant to 75-2-301(9), the department shall assess and collect a noncompliance penalty from any person who owns or operates:





(a) a stationary source which is not in compliance with any provision of [Title 75, chapter 2] or any rule adopted or order issued pursuant to [Title 75, chapter 2];

(b) a stationary source which is not in compliance with an emission limitation, emission standard, standard of performance, or other requirement under 42 U.S.C. 7411 or 42 U.S.C. 7412; or

(c) any source referred to in subsections (1)(b) or (1)(c) which has been granted an exemption, extension, or suspension under subsection (2) or which is covered by a compliance order if such source is not in compliance with any interim emission control requirement or schedule of compliance under such extension, order, or suspension.

(2) Notwithstanding the requirements of subsection (1), the department may, after notice and opportunity for a public hearing, exempt any source from the requirements of [sections 7 through 15] with respect to a particular instance of noncompliance which:

(a) the department finds is de minimus in nature and in duration; or

(b) is exempt under 42 U.S.C. 7420(a)(2)(B) of the federal Clean Air Act.

NEW SECTION. Section 8. Amount of noncompliance penalty -- late charge. (1) The amount of the penalty which shall be assessed and collected with respect to any source



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under [sections 7 through 15] shall be equal to:

(a) the amount determined in accordance with the rules adopted by the board, which shall be no less than the economic value which a delay in compliance after July 1, 1979, may have for the owner of such source, including the quarterly equivalent of the capital costs of compliance and debt service over a normal amortization period not to exceed 10 years, operation and maintenance costs foregone as a result of noncompliance, and any additional economic value which such a delay may have for the owner or operator of such source; minus

(b) the amount of any expenditure made by the owner or operator of that source during any such quarter for the purpose of bringing that source into and maintaining compliance with such requirement, to the extent that such expenditures have not been taken into account in the calculation of the penalty under subsection (1)(a).

(2) To the extent that any expenditure under subsection (1)(b) made during any quarter is not subtracted for such quarter from the costs under subsection (1)(a), such expenditure may be subtracted for any subsequent quarter from such costs. In no event may the amount paid be less than the quarterly payment minus the amount attributed to actual cost of construction.

(3) If the owner or operator of any stationary source





to whom notice is issued under [section 11] does not submit a timely petition under [subsection (2)(b) of section 11] or submits a petition which is denied and if the owner or operator fails to submit a calculation of the penalty assessment, a schedule for payment, and the information necessary for independent verification thereof, the department may enter into a contract with any person who has no financial interest in the matter to assist in determining the amount of the penalty assessment or payment schedule with respect to such source. The cost of carrying out such contract may be added to the penalty to be assessed against the owner or operator of such source.

(4) Any person who fails to pay the amount of any penalty with respect to any source under [sections 7 through 15] on a timely basis shall be required to pay in addition a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be equal to 20% of the aggregate amount of such person's penalties and nonpayment penalties with respect to such source which are unpaid as of the beginning of such quarter.

NEW SECTION. Section 9. Manner of making payment. (1) The assessed penalty required under [sections 7 through 15] shall be paid in quarterly installments for the period of covered noncompliance. All quarterly payments, determined without regard to any adjustment or any subtraction under

[subsection (1)(b) of section 8], after the first payment shall be equal.

(2) The first payment shall be due on the date 6 months after the date of issuance of the notice of noncompliance under [section 11] with respect to any source. Such first payment shall be in the amount of the quarterly installment for the upcoming quarter, plus the amount owed for any preceding period within the period of covered noncompliance for such source.

(3) For the purpose of this section, the term "period of covered noncompliance" means the period which begins on the date of issuance of the notice of noncompliance under [section 11] and ends on the date on which such source comes into or, for the purpose of establishing the schedule of payments, is estimated to come into compliance with such requirement.

NEW SECTION. Section 10. Adjustment of fee. (1) The department shall adjust from time to time the amount of the penalty assessment calculated or the payment schedule proposed by such owner or operator under [subsection (2)(a) of section 11], if the department finds after notice and opportunity for a hearing on the record that the penalty or schedule does not meet the requirements of [sections 7 through 15].

(2) Upon making a determination that a source with





respect to which a penalty has been paid under [sections 7 through 15] is in compliance and is maintaining compliance with the applicable requirement, the department shall review the actual expenditures made by the owner or operator of such source for the purpose of attaining and maintaining compliance and shall make a final adjustment within 180 days after such source comes into compliance and:

(a) provide reimbursement with interest to be paid by the state at appropriate prevailing rates for overpayment by such person; or

(b) assess and collect an additional payment with interest at appropriate prevailing rates for any underpayment by such person.

NEW SECTION. Section 11. Notice of noncompliance -- challenge. (1) The department shall give a brief but reasonably specific notice of noncompliance to each person who owns or operates a source subject to [subsection (1) of section 7] which is not in compliance as provided in that subsection, within 30 days after the department has discovered the noncompliance.

(2) Each person to whom notice has been given pursuant to subsection (1) shall:

(a) calculate the amount of penalty owed (determined in accordance with [subsection (1) of section 8]) and the schedule of payments (determined in accordance with [section



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9]] for each source and, within 45 days after issuance of the notice of noncompliance, submit that calculation and proposed schedule, together with the information necessary for an independent verification thereof, to the department; or

(b) submit to the board a petition within 45 days after the issuance of such notice, challenging such notice of noncompliance or alleging entitlement to an exemption under [subsection (2) of section 7] with respect to a particular source.

(3) Each person to whom notice of noncompliance is given shall pay the department the amount determined under [section 8] as the appropriate penalty unless there has been a final determination granting a petition filed pursuant to subsection (2)(b).

NEW SECTION. Section 12. Hearing on challenge. (1) The board shall provide a hearing on the record and make a decision (including findings of fact and conclusions of law) not later than 90 days after the receipt of any petition under [subsection (2)(b) of section 11] with respect to such source.

(2) If the petition is denied, the petitioner shall submit the material required by [subsection (2)(a) of section 11] to the department within 45 days of the date of decision.





NEW SECTION. Section 13. Deposit of noncompliance penalty fees. All noncompliance penalties collected by the department pursuant to [sections 7 through 15] shall be deposited in an earmarked revenue fund until a final determination and adjustment have been made as provided in [section 10] and amounts have been deducted by the department for costs attributable to implementation of [sections 7 through 15] and for contract costs incurred pursuant to [subsection (3) of section 8], if any. After a final determination has been made and additional payments or refunds have been made, the penalty money remaining shall be transferred to the state general fund.

NEW SECTION. Section 14. Effect of new standards on noncompliance penalty. In the case of any emission limitation, emission standard, or other requirement approved or adopted by the board under [Title 75, chapter 2] after [the effective date of this act] which is more stringent than the emission limitation or requirement for the source in effect prior to such approval or promulgation, if any, or where there was no emission limitation, emission standard, or other requirement approved or adopted before [the effective date of this act], the date for imposition of the noncompliance penalty under [sections 7 through 15] shall be the date on which the source is required to be in full compliance with such emission limitation, emission standard,

or other requirement or 3 years after the approval or promulgation of such emission limitation or requirement, whichever is sooner.

NEW SECTION. Section 15. Effect of noncompliance penalty on other remedies. (1) Any orders, payments, sanctions, or other requirements under [sections 7 through 15] shall be in addition to any other permits, orders, payments, sanctions, or other requirements established under [Title 75, chapter 2] and shall in no way affect any civil or criminal enforcement proceedings brought under 75-2-412 or 75-2-413.

(2) The noncompliance penalties collected pursuant to [sections 7 through 15] are intended to be cumulative and in addition to any other remedies, procedures, and requirements authorized by [Title 75, chapter 2].

Section 16. Section 75-2-413, MCA, is amended to read:

"75-2-413. Civil penalties -- out-of-state litigants -- effect of action. (1) Any person who violates any provision of this chapter or any rule enforced thereunder or any order made pursuant thereto shall be subject to a civil penalty not to exceed ~~$1,000~~ $25,000. Each day of violation shall constitute a separate violation. The department may institute and maintain in the name of the state any enforcement proceedings hereunder. Upon request of the department, the attorney general or the county attorney of





the county of violation shall petition the district court to impose, assess, and recover the civil penalty. The civil penalty is in lieu of the criminal penalty provided for in 75-2-412.

(2) (a) Action under subsection (1) of this section is not a bar to enforcement of this chapter or of rules or orders made under it by injunction or other appropriate civil remedies.

(b) An action under subsection (1) or to enforce this chapter or the rules or orders made under it may be brought in the district court of any county where a violation occurs or is threatened if the defendant cannot be located in Montana.

(3) Moneys collected hereunder shall be deposited in the state general fund."

Section 17. Codification. It is intended that sections 7 through 15 be codified as an integral part of Title 75, chapter 2, part 4, and the provisions of Title 75, chapter 2, apply to sections 7 through 15.

Section 18. Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 19. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid



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part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-

Chairman Roskie then opened the hearing to questions from the Committee and there was some discussion about the changes this bill proposes to make in the Major Facility Siting Act.

Chairman Roskie then informed the Committee he would put HB 883 into a subcommittee.

Representative Bardanouve made a brief closing statement.

Senator Thiessen moved that Chairman Roskie appoint a subcommittee for HB 883 with Chairman Roskie being an ex officio member of the subcommittee. The motion passed unanimously with Senator Roskie abstaining.

There was a brief recess while those visitors only interested in HB 883 left the Committee Room.

CONSIDERATION OF HB 716: "An act to amend the Clean Air Act of Montana (etc.)".

Chairman Roskie called on Representative Daniel Kemmis, District 94, to present HB 716 to the Committee. Representative Kemmis pointed out that HB 716 was necessary to comply with federal laws and that if it was not adopted the Environmental Protection Agency will access non-compliance penalties against sources not in compliance with the Clean Air Act and they will receive the money rather than the state of Montana. Representative Kemmis highlighted the main points of the bill and the reasons for their necessity. He then proposed some amendments for the Committee's consideration (see attachment).

Senator Chet Blaylock, District 35, co-sponsor of HB 716, said he would like to see the fine lowered from $25,000 to $10,000 as was proposed by Representative Kemmis.

Mr. Mike Roach, Air Quality Bureau. spoke in favor of HB 716 and submitted his testimony in written form (see attachment).

Mr. Steve Foster, Anaconda Company, spoke in favor of HB 716. He submitted his comments in written form along with some amendments for the Committee's consideration (see attachment).

Mr. Jim Mockler, Montana Coal Council, spoke in favor of HB 716 and offered some amendments for the Committee's consideration (see attachment).

Linda Ruprecht spoke in favor of HB 716 and submitted her testimony in written form (see attachment).

Mr. Don Allen, Montana Petroleum Association, said he supported HB 716 and the amendments.

Mr. David Feffer, Health Officer for Missoula County, also spoke

Karen Zackheim spoke in favor of HB 716 and submitted her testimony in written form (see attachment).

Mr. Les Loble II, Montana Dakota Utilities, and Chairman of City-County Board of Health in Helena, spoke in favor of HB 716 and submitted some amendments for the Committee's consideration (see attachment).

There being no other proponents to HB 716, Chairman Roskie called for any opponents. Mr. Robert Helding, Executive Director for the Montana Wood Products Association, spoke in opposition to HB 716 and submitted some comments about the features of HB 716 which he still felt were objectionable (see attachment). He also submitted some amendments for the Committee's consideration (see attachment).

Mr. Peter Jackson, Western Environmental Trade Association, also spoke in favor of HB 716 and said he also supported the amendments.

Chairman Roskie then opened the hearing to questions from the Committee and there were none.

Representative Kemmis closed and said if there was any ambiguity about whether or not the local governments need to meet the requirements, he will prepare an amendment.

DISPOSITION OF HB 555: Chairman Roskie called the Committee's attention to their copy of the amendments proposed by Representative Hand on HB 555. Several questions were addressed to Mr. Wilbur Anderson, General Manager of Vigilante Electric Cooperative. Senator Dover moved the amendments proposed by Representative Hand be adopted. All those present voted in favor of the motion with the exception of Senator Brown. Senator Dover then moved that HB 555 BE CONCURRED IN as Amended and Senator Etchart seconded the motion. All those present voted in favor of the motion with the exception of Senator Brown.

ADJOURNMENT: There being no further business the meeting adjourned at 3:00 P.M.

SENATOR GEORGE F. ROSKIE, CHAIRMAN

Date 3/14/79

ROLL CALL

Natural Resources COMMITTEE

46th LEGISLATIVE SESSION - 1979

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| ROSKIE, George F., Chairman | ✓ | | |
| DOVER, Harold L., Vice-Chairman | ✓ | | |
| BROWN, Steve | ✓ | | |
| ETCHART, Mark | ✓ | ✓ | |
| JERGESON, Greg | ✓ | | |
| LOCKREM, Lloyd C., Jr. | ✓ | | |
| LOWE, William R. | | ✓ | |
| MANLEY, John E. | ✓ | | |
| STORY, Pete | ✓ | ✓ | |
| THIESSEN, Cornie R. | | ✓ | ✓ |
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Each Day Attach to Minutes.

SENATE

SENATE _____ COMMITTEE

BILL _____ VISITORS' REGISTER DATE _____

Please note bill no.

| NAME | REPRESENTING | BILL # | (check one) SUPPORT | OPPOS |
|---|---|---|---|---|
| Ted Doney | DNRC | HB 883 | X | |
| Ward Shanahan | Sweet Grass Co. | HB 883 | Amend | |
| Steve Carey | VM Farms | HB 716 | X | |
| Shelley Thompson | Montana Mining Assn | HB 716 | | |
| Ronald Pogue | Alternative Energy Resources Organization | HB 883 | Support as is. | |
| Dave A. Rostad | League of Women Voters | HB 883 | X | |
| Karen Stahlnecker | League of Women Voters | HB 883 | ✓ | |
| John Rosa | Montana Power | 883 | | |
| Ron Waldron | DNRC | 883 | ✓ | |
| Wade Hall | Montana Wildlife Federation | 716 | ✓ | |
| Bill Harbrick | EQC | | | |
| Bruce Brown | | 883 | ✓ | |
| Jim Richard | | 716 | ✓ | |
| Dennis Lopach | MPC | 716 | amend | |
| Kim Zachheim | | 716 | ✓ | |
| Mike Rosell | AGR - DNRC | 716 | ✓ | |
| [illegible] | [illegible] | [illegible] | | |
| [illegible] | [illegible] | [illegible] | | |
| [illegible] | [illegible] | [illegible] | | |
| Jim Bakstad | DHES - AGR | 716 | — | |
| [illegible] | | 716 | | |
| [illegible] | [illegible] | [illegible] | ✓ | |
| [illegible] | [illegible] | | | |
| [illegible] | [illegible] | [illegible] | [illegible] | |

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

NAME: Mike Roach DATE: 3-14-79

ADDRESS: AQB - DHES

PHONE: 449 3454

REPRESENTING WHOM? AQB - DHES

APPEARING ON WHICH PROPOSAL: HB 716

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: STEPHEN FOSTER DATE: 3/14/75

ADDRESS: Box 689 BUTTE

PHONE: 723-4311

REPRESENTING WHOM? THE Anaconda Co.

APPEARING ON WHICH PROPOSAL: H.B. 716

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: David Alan Folk DATE: 3-14-79

ADDRESS: 301 W Alder St. Missoula

PHONE: 549-6989

REPRESENTING WHOM? Missoula City-County Health Dept.

APPEARING ON WHICH PROPOSAL: HB-716

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Karen Zackheim DATE: March 16, 1979

ADDRESS: 308 S. 6th E, Missoula

PHONE: 549-2179

REPRESENTING WHOM? myself

APPEARING ON WHICH PROPOSAL: HB 716

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE NATURAL RESOURCES COMMITTEE

TESTIMONY ON HB 716

MR. CHAIRMAN, MEMBERS OF THE COMMITTE

MY NAME IS MIKE ROACH AND I'M WITH THE AIR QUALITY BUREAU.

MY REMARKS WILL SUPPORT THOSE OF REPRESENTATIVE KEMMIS.

THE BILL WAS DRAFTED AS A RESULT OF THE FEDERAL CLEAN AIR ACT AMENDMENTS WHICH WERE ADOPTED IN AUGUST OF 1977.

THE MAIN INTENT OF THE BILL IS TO PROVIDE STATUTORY AUTHORITY TO THE STATE TO ADMINISTER THOSE FEDERAL LAWS AND WHERE POSSIBLE KEEP EPA AT ARM'S LENGTH.

THE DESIRE FOR STATE CONTROL HAS DRAWN SUPPORT FROM DIVERSE MONTANA INDUSTRIES AND PUBLIC INTEREST GROUPS. ANACONDA COPPER, ANACONDA ALUMINUM, MONTANA POWER, EIC, BILLINGS REFINERIES, AND COAL COMPANIES HAVE WORKED TO TAILOR THIS LEGISLATION TO THE STATE'S NEEDS.

THERE ARE THREE MAJOR POINTS IN THE BILL. THESE POINTS INVOKE DIRECTLY OR INDIRECTLY PRESENT FEDERAL LAW.

THE FIRST IS A PROVISION THAT PERMITS SHALL BE IMPLEMENTED AND ENFORCED WITH THE REASONABLE COST CHARGED BACK TO THE INDUSTRY. FEDERAL LAW REQUIRES THIS. IF THE STATES DO NOT IMPLEMENT THEN EPA MUST, AND THE FEES WOULD REVERT TO THEM.

THE SECOND PROVISION IS TO ELIMINATE THE ECONOMIC ADVANTAGE ONE SOURCE MIGHT ENJOY OVER ANOTHER BY NOT SPENDING THE

MONEY TO PUT IN CONTROLS. THESE PROVISIONS ARE THE NEW NON-COMPLIANCE PENALTY SECTIONS. THE FEDERAL CLEAN AIR ACT REQUIRES NON-COMPLIANCE PENALTIES STARTING IN JULY OF THIS YEAR. IF THE STATE ASSUMES THE PROGRAM THEN MONIES COLLECTED WILL GO INTO THE STATE GENERAL FUND. OTHERWISE SUCH FUNDS WOULD REVERT TO THE U.S. TREASURY.

THE THIRD POINT IS AN INCREASE IN THE CIVIL PENALTY. THE FEDERAL ACT HAS A $25,000 CIVIL PENALTY. THE DEPARTMENT HAS AGREED WITH INDUSTRY THAT A $10,000 PENALTY IS SUFFICIENT. THIS CORRESPONDS TO THE AMOUNT AVAILABLE FOR WATER POLLUTION.

IN ADDITION TO THE REDUCTION IN THE CIVIL PENALTY, INDUSTRY WILL PRESENT SOME CLARIFYING AMENDMENTS THAT THE DEPARTMENT WILL SUPPORT.

ADDITIONAL PROVISIONS OF THE ACT CLARIFY THE ROLE OF THE LOCAL AIR POLLUTION PROGRAMS AND STREAMLINE NOTICE AND HEARING PROCEDURES.

THIS IS AN IMPORTANT BILL THAT HAS RECEIVED BROAD-BASED SUPPORT BOTH BY INDUSTRY AND PUBLIC INTEREST GROUPS. IT SHOULD BE PASSED.

Testimony on House Bill 716 - An Act to Amend the Clean Air Act of Monta

My name is Linda Ruprecht and I'm a resident of Missoula, a former schoolteacher, and now a candidate for a Master of Science degree at the University of Montana. I'd like to speak in support of House Bill 716 in general, and in specific, I'd like to offer my comments on the local air pollution control amendments included in this bill.

The first air pollution law in the United States was an 1881 ordinance adopted by the Chicago City Council. That ordinance allowed the emission of dense smoke from the smokestack of any boat or locomotive or from any chimney within the city to be treated as a public nuisance.[1] Air pollution now, as then, is predominantly a local problem and concern. The choice of air quality is essentially a local choice which depends on the local meteorological conditions, the mix of pollutants released, the availability of technology and the cost of controls, and the local preferences for clean air relative to other individual and social goals. Any air pollution control effort should be allowed to reflect the values of the local citizenry regarding air quality. House Bill 716, if passed, would allow for more sensitive responses by the state's air pollution control agencies to individual community situations.

Montana currently has only three local air pollution control programs: Missoula County, Yellowstone County, and Cascade County. These programs were established as a result of expressed community concern for air quality. In the future, public concern may bring about the establishment of similar programs in other communities. Montana citizens should have the right to handle their community affairs, including air quality, in ways which meet both the state regulations as well as their own community concerns. House Bill 716 is a step in that direction and I urge you to support it.

Linda J. Ruprecht

Linda J. Ruprecht

4801 Sundown Road
Missoula, Montana 59801

[1] J. Clarence Davies III and Barbara S. Davies, The Politics of Pollution (Indianapolis, IN: Pegasus, Bobbs-Merrill Company, 1975), p.19.

Testimony of Karen Zackheim on House Bill 716

Presented to the Senate Natural Resources Committee on March 14, 1979

My name is Karen Zackheim. For the past four years, I've been involved in air pollution research as a graduate student at the University of Montana. During this time, I've become familiar with the federal Clean Air Act Amendments of 1977 and the Montana Clean Air Act. The noncompliance penalty fee system proposed in sections 7 through 15 of HB 716 was taken directly from the federal Clean Air Act Amendments. It is a system designed to reduce the unfair economic advantage a polluting industry could have over its competitors by not investing in the pollution abatement equipment necessary to comply with federal emission standards. Under the noncompliance penalty system, any industry not in compliance with emission standards will be assessed a penalty fee, comparable to the cost of installing the appropriate abatement equipment. In this way, industries are encouraged to invest in clean air technology in the first place, rather than being forced to by the state or the EPA.

The Environmental Protection Agency will assess and collect non-compliance penalty fees if we do not pass HB 716. Montana stands to lose considerable control over its air pollution enforcement program and may lose substantial sums of money to the federal government if this happens. I would rather see the state continue to control our air pollution enforcement program than see it handed over to the EPA.

Another section of HB 716 proposes to increase the civil penalty from $1000 per day to $25,000 per day. Civil penalties are entirely different from noncompliance penalties, they apply to anyone who violates any provision of the Montana Clean Air Act unless otherwise exempted. The maximum penalty is not automatically assessed against a violator; it is only an upper limit on what the courts are allowed to assess. Penalty fees will continue to be set by the district courts based on the court's consideration of each individual case brought before them.

HB 716 will insure state control over air pollution enforcement and will encourage industries to work for cleaner air. I urge the

## HOUSE BILL 716

The Department bill to amend the Clean Air Act, although amended in the House, still contains features which are objectionable.

### Local Government Authority without guidelines or limitations

Probably the most serious problem with this bill is that it gives local government the authority to assess and collect noncompliance penalties for air contaminant sources under its jurisdiction (p. 11, l. 21) without any guidelines or limitations whatsoever, and also without any right of notice, appeal or other protection. If it were intended that local government was to follow the same procedure as the department the bill should so state. But even then it would be objectionable because local government possesses neither the staff nor the abilities to fulfill the functions contemplated by House Bill 716 with respect to the determination of penalty (p. 15), the adjustment of penalty assessment (p. 18), or giving notice of noncompliance and providing a hearing on challenges.

### Local Government Authority Conflicting

On page 14, lines 7 to 12, there seems to be a clear statement that the Department will do the assessing of noncompliance penalties which is directly in conflict with the provisions on page 11, line 21 which gives to local government the power to assess and collect the penalties.

### Economy and Efficiency Discarded

On page 10, line 24, why was the clause "or may be more efficiently and economically performed at the state level" deleted? Is it desirable to give compliance work to local jurisdictions even though the state could perform the work more efficiently and economically?

### Inconsistent Administration

Under this proposed bill it is both possible and likely that the policies and enforcement of ambient air standards by the local jurisdiction will be entirely inconsistent with enforcement by the state Department in areas where no local authority is available. Certainly this double standard would be undesirable.

### Proposed Amendments

This bill could be substantially improved by eliminating all new material referring to municipal and county government. If it is the wish of the legislature to give to the local government some portion of the permit fees or penalties, this could be done in a separate section but should not be done by adding a third tier in government to police air pollution laws, rules and regulation

SENATE

SENATE COMMITTEE ON NATURAL RESOURCES AMENDMENTS TO HOUSE BILL 716

1. Amend title, line 20.
Following: "MAIL;"
Strike: "TO REVISE AND CLARIFY THE ROLE OF LOCAL GOVERNMENT IN THE CONTROL OF AIR CONTAMINATION;"

2. Amend page 6, line 15.
Following: "to"
Strike: "a local government exercising authority under 75-2-301(9) or to"

3. Amend page 6, line 16.
Following: "department"
Strike: "if such local authority is not exercised"

4. Amend page 6, line 25.
Following: "department"
Strike: "OR SAID LOCAL GOVERNMENT"

5. Amend page 9, line 8.
Following: "75-2-203,"
Strike: "75-2-204, 75-2-211,"

6. Amend page 10, line 25.
Following: "level"
Insert: "or may be more efficiently and economically performed at the state level"

7. Amend page 10, line 25 and page 11, lines 1 and 2.
Following: "level"
Strike: "and that the department is better able than the local jurisdiction to control the air contaminant source"

8. Amend page 11, line 18 through line 11 on page 12.
Strike: subsection (9) in its entirety.

9. Amend page 14, lines 9 and 10.
Following: "(2)"
Strike: "and subject to collection by a local government pursuant to 75-2-301(9),"

HB 555, Third Reading Copy

1. Title, line 7.
Following: "POWER"
Insert: "AND TO PROVIDE FOR POWER GENERATION AT TOSTON DAM"
Following: "MCA"
Insert: "; PROVIDING AN EFFECTIVE DATE"

2. Page 3, line 16.
Following: line 15
Insert: "Section 3. There is a new MCA section that reads:
Power generation at Toston Dam.

(1) The department shall conduct a study of the economic feasibility of power generation at the Broadwater-Missouri Dam facilities (Toston Dam). This study is to be completed no later than June 30, 1979. If the study shows that power generation is economically feasible, the department shall offer for lease the use of the facilities at Toston Dam for power generation, subject to the requirements of subsection (2).

(2) The facilities, if subject to lease under subsection (1), shall be offered for lease no later than November 1, 1979, and a decision on the lease shall be made no later than February 1, 1980. Preference in granting the lease shall be given to nonprofit corporations. The minimum acceptable lease offer must provide for an annual payment of an amount equal or equivalent to 1 mill per kilowatt hour of power generated and sold. Notwithstanding the provisions of 85-1-332, the department shall use 50% of the lease revenues for maintenance and repair of Toston Dam and its associated irrigation facilities."
Renumber: subsequent section

3. Page 3, line 16.
Following: "CODIFICATION."
Strike: "SECTION 2 IS"
Insert: "Sections 2 and 3 are"

4. Page 3, line 19.
Following: "TO"
Strike: "SECTION 2"
Insert: "sections 2 and 3"

5. Page 3, line 20.
Following: line 19
Insert: "Section 5. Effective date. Section 3 is effective on passage and approval of this act."

Anaconda Co. submitted same amendment as Rep. Jensen

THE ANACONDA COMPANY

POSITION ON HOUSE BILL 716

---

The Anaconda Company supports House Bill 716, as amended, for a number of reasons.

1) The bill authorizes the Board of Health to issue orders to nonferrous smelters which relieve them of the burden of complying with sulfur dioxide regulations where no technology is reasonably available by which they can do so. We don't know if we will need this relief, but we may, and such an order could avoid closure of the smelter.

2) The bill contains provisions which will make it possible for The Anaconda Aluminum Company to avoid exposure to heavy fines while it is in the process of completing construction of pollution control facilities as fast as possible.

3) The bill will allow the Department of Health to issue air quality permits to new mines and industrial facilities. This will facilitate development of Montana's energy and mineral resources with a minimum of interference by the U.S. Environmental Protection Agency which in the past has demonstrated an insensitivity to the economic needs of this state and its citizens.

NAME Les Loble BILL NO. HB 716

ADDRESS 716 Bozeman DATE 3-15-79

WHOM DO YOU REPRESENT Montana Dakota Utilities Co

SUPPORT X OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: Amendments

p 22, line 17, add after "pursuant thereto"

The language

~~"and after notice thereof is given of violation~~

"and after notice of violation is given by the department

p 6, lines, 18-19, and 25, Strike references to Local government

p 11, l 18 Strike lines 18 - 25 and

p 12, ~~l 1-11~~ Strike lines 1 - 11.

NAME: Jim MacKay DATE: 2/12/79

ADDRESS: 2301 Colonial Dr

PHONE: 442-6223

REPRESENTING WHOM? Montana Coal Council

APPEARING ON WHICH PROPOSAL: HB 716

DO YOU: SUPPORT? ✓ AMEND? ✓ OPPOSE? _____

COMMENTS: Amend:

page 5, line 7; following "fees" insert "to the applicant"

page 22, line 18; delete "$25,000" insert "$5,000"

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

through 9 on page 7.

Chairman Roskie summarized the history of HJR 37. Senator Etchart then made a substitute motion that the amendments incorporated in the re-drafted copy of HJR 37 be adopted. All those present voted in favor of the motion with the exception of Senator Lockrem. Senator Brown then moved that HJR 37 BE CONCURRED IN as Amended. All those present voted in favor of the motion except Senator Lockrem.

DISPOSITION OF HB 716: Senator Etchart moved the adoption of the amendments to HB 716 proposed by Mr. Robert Helding in the hearing on March 14. Chairman Roskie called for a roll call vote on the motion and the motion carried (see attachment). There was further discussion on the other proposed amendments to HB 716. Senator Brown moved that the first amendments proposed by Representative Kemmis in the hearing on March 14 amending page 14, line 16 not be adopted. The motion passed unanimously. Senator Brown then moved that the other two amendments proposed by Representative Kemmis on March 14 amending page 15, line 15 and page 15, line 17, be adopted. The motion carried with Senator Lockrem and Manley voting no. Senator Etchart moved to further amend HB 716 by adopting the final amendment proposed by Representative Kemmis amending page 22, line 18 to change the fine from $25,000 to $10,000. Chairman Roskie called for a roll call vote on the motion and the motion carried (see attachment). Senator Etchart then moved to further amend HB 716 on page 22, line 17 by inserting "and after notice thereof has been given by the department" following "thereto". The motion carried with Senators Brown and Jergeson voting against the motion.

Representative Kemmis submitted further amendments to HB 716 for the Committee's consideration (see attachment), but they were rendered mute by the adoption of Mr. Helding's amendments.

Senator Jergeson then moved to amend the statement of intent on HB 716. The motion carried with Senator Lockrem voting against the motion.

Senator Lockrem then moved to adopt the first amendment proposed by Mr. Jim Mockler in the hearing on March 14 to amend HB 716 by inserting "to the applicant" following "fees" on page 5, line 7.

Senator Brown then moved that Jim Lear draft the appropriate language in the statement of intent to comply with page 15, lines 22 through 24. All those present voted in favor of the motion.

Senator Brown moved that HB 716 BE CONCURRED IN as Amended. All those present voted in favor of HB 716 except Senators Lockrem and Manley.

Chairman Roskie then asked the Committee if they wished to re-consider their action on HB 733. Senator Jergeson moved to re-consider the Committee's action on HB 733. Chairman Roskie called for a roll call vote and the motion carried (see attachment). Senator Jergeson then moved that HB 733 BE CONCURRED IN as Amended. After some discussion Senator Lowe decided to change his vote on the motion to re-consider the Committee's action on HB 733 which overturned the original motion to re-consider.

DISPOSITION OF HB 313: Senator Lowe moved that HB 313 BE NOT CONCURRED IN. Senator Jergeson objected to the motion made by Senator Lowe. Chairman Roskie called for a roll call vote on Senator Lowe's motion and the motion carried (see attachment).

ADJOURNMENT: There being no further business the meeting adjourned at 2:50 P.M.

SENATOR GEORGE F. ROSKIE, Chairman

March 20, 19 79

MR. President

We, your committee on Natural Resources

having had under consideration House Bill No. 716,

Kemmis (Brown)

Respectfully report as follows: That House Bill No. 716,
third reading bill, be amended as follows:

1. Title, lines 20 through 22.
Following: "MAIL;" on line 20
Strike: remainder of line 20 through "CONTAMINATION;" on line 22

2. Page 5, line 7.
Following: "fees"
Insert: "to the applicant"

3. Page 6, lines 15 through 17
Following: "to" on line 15
Strike: remainder of line 15 through "to" on line 16
Following: "department"
Strike: "if such local authority is not exercised"

4. Page 6, line 25.
Following: "department"
Strike: "OR SAID LOCAL GOVERNMENT"

DO PASS

(Continued)

Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

March 20, 1979

MR. President

We, your committee on Natural Resources

having had under consideration Statement of Intent, House Bill No. 716

Respectfully report as follows: That Statement of Intent, House Bill No. 716 be amended as follows:

1. Page 1, lines 6 through 8.
Following: "schedule" on line 6
Strike: remainder of line 6 through "schedule." on line 8
Insert: ", and to adopt a schedule of penalty assessments for noncompliance with respect to any source under sections 7 through 15 of this act."

And, as so amended,
~~DO PASS~~
BE CONCURRED IN

George F. Roskie Chairman.

STATE PUB. CO.
Helena, Mont.

5. Page 9, line 8.
Following: "75-2-203"
Strike: "75-2-204, 75-2-211,"

6. Page 10, line 25.
Following: "level"
Insert: "or may be more efficiently and economically performed at the state level"

7. Page 10, line 25 through line 2 on page 11.
Following: "level"
Strike: remainder of line 25 through "source" on line 2

8. Page 11, line 18 through line 11 on page 12.
Strike: "subsection (9) in its entirety"

9. Page 14, lines 9 and 10.
Following: "(2)"
Strike: " and subject to collection by a local government pursuant to 75-2-301(9),"

10. Page 15, line 15.
Following: "duration"
Strike: "or"
Insert: "(b) is caused by conditions beyond the reasonable control of the source and is of no demonstrable advantage to the source; or"
Renumber: subsequent subsection

11. Page 15.
Following: line 17
Insert: "(3) Any person who is jointly or severally adversely affected by the department's decision may request, within 15 days after the department renders its decision, upon affidavit setting forth the grounds therefor, a hearing before the board. A hearing shall be held under the provisions of the Montana Administrative Procedure Act."

12. Page 22, line 17.
Following: "thereto"
Insert: "and after notice thereof has been given by the department"

13. Page 22, line 18.
Following: "exceed"
Strike: "$25,000"
Insert: "$10,000"

And, as so amended,
BE CONCURRED IN

George F. Roskie
Chairman.

STATE PUB. CO.

SENATE COMMITTEE NATURAL RESOURCES

Date March 19, 1979 House Bill No. 716 Time

| NAME | YES | NO |
|---|---|---|
| ROSKIE, George F., Chairman | ✓ | |
| DOVER, Harold L., Vice-Chairman | | |
| BROWN, Steve | ✓ | |
| ETCHART, Mark | ✓ | |
| JERGESON, Greg | ✓ | |
| LOCKREM, Lloyd C., Jr. | | ✓ |
| LOWE, William R. | ✓ | |
| MANLEY, John E. | | ✓ |
| STORY, Pete | | |
| THIESSEN, Cornie R. | | |
| | | |
| | | |

SHARON NASON
Secretary

GEORGE F. ROSKIE
Chairman

Motion: By Senator Etchart that HB 716 be amended on page 22, line 18 to change the fine from $25,000 to $10,000.

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE NATURAL RESOURCES

Date March 19, 1979 House Bill No. 716 Time

| NAME | YES | NO |
|---|---|---|
| ROSKIE, George F., Chairman | ✓ | |
| DOVER, Harold L., Vice-Chairman | | |
| BROWN, Steve | | ✓ |
| ETCHART, Mark | ✓ | |
| JERGESON, Greg | | ✓ |
| LOCKREM, Lloyd C., Jr. | | ✓ |
| LOWE, William R. | ✓ | |
| MANLEY, John E. | ✓ | |
| STORY, Pete | | |
| THIESSEN, Cornie R. | | |
| | | |
| | | |

SHARON NASON
Secretary

GEORGE F. ROSKIE
Chairman

Motion: By Senator Etchart that the amendments proposed by Mr. Robert Helding for HB 716 in the hearing on March 14 be adopted.

(include enough information on motion--put with yellow copy of committee report.)

PROPOSED AMENDMENTS TO HOUSE BILL 716

Third reading copy, be amended as follows:

1. Page 11, line 23.
Following: "jurisdiction."
Insert: "The municipality or county shall be subject to the notice and hearing requirements of [sections 11 and 12]."

2. Page 12, line 11.
Following: "75-2-211."
Insert: "The municipality or county shall not assess fees in excess of the schedule adopted by the board pursuant to 75-2-211."

Representative Kemmis

HSP:yb
3-16-79

MIKE KOACH, Department of Health, said copies of the Air Quality Bureau's (DHES) impact statement on Montana Ambient Air Quality Standards study had been given to each member of the committee. He said standards need to be taken to the specific things that the standards need to protect. He said the main thrust of this bill is what kinds of procedures will be used and how it pertains to Montana. He said the Board of Health has been totally fair in the past. He said the state does have the procedures and the history to come up with a better product as they would be looking at specific facts in specific areas.

DAVID ALBERSWORTH, Northern Plains Resource Council, stated their opposition to the bill. A copy of his testimony is exhibit 17 and part of the minutes.

WILLIAM TOMLINSON, representing self, spoke in opposition and a copy of his testimony is exhibit 18 and part of the minutes.

CINDI WILLIAMS, Environmental Information Center, said they oppose the bill and a copy of her testimony is exhibit 19 and part of the minutes.

ELLEN DITZLER read testimony presented by Frank Crowley of Missoula. A copy of this testimony is exhibit 20 and part of the minutes.

Also signing as opposing the bill were:
Richard Steffel, representing self, a copy of his testimony is ex. 21
Dawn A. North, League of Women Voters of Montana

Questions were asked by the committee.

Sen. Marks closed. He said he felt this was a basic problem and that problem was to survive, and to do this we need jobs. He said he felt there comes a point in time and economics beyond which the decision has to be made as to how much we can clean up the air and still have a viable industry. He said it may be true that in certain cases the EPA standards are not satisfactory. He had no problems with the EPA standards. This would be a way of saving tax dollars.

HOUSE BILL 716

REPRESENTATIVE DANIEL KEMMIS, District #94, the chief sponsor, said the bill was introduced at the request of the Department of Health and Environmental Sciences. He said it amends the Montana Clean Air Act in a number of ways. He said recent amendments require the imposition of noncompliance penalties for noncompliers. He said if the state does not do this then the federal government will do so and any money collected will go to them. The bill would raise the penalty from $1,000 to $25,000 a day, broaden the power of local governments, and it allows local governments to assess local fees.

MIKE KOACH, Department of Health, said the main thrust the department looks at when faced with the new standards is how Montana can do its

does not, and limit as much as possible federal intervention into state affairs. He said if they do not collect the fee for review and future review the EPA has the authority to collect it and then the money will go into the US Treasury. Noncompliance penalties would be assessed on any that was not meeting emission standards. This penalty would have to equal whatever economic advantage they had over their competitors by noncomplying. The federal act would require the states to do the program but the program must be implemented. The reason they set the penalty at $25,000 is that if EPA determines the penalty is not sufficient it can come in and levy a higher penalty then the state--he said ours has been $1000 and the federal's $25,000 a day.

LINDA RUPRECHT, Missoula, representing self, said she supported the bill with a suggested amendment. A copy of her testimony is exhibit 22 and part of the minutes.

LEE LOSHER for David Feffer, Missoula City County Health Department, read his statement of support. A copy of this testimony is exhibit 23 and part of the minutes.

STEVE FOSTER, Anaconda Company, said they support the bill with several amendments, which he said are mostly agreeable to the Air Quality people and Rep. Kemmis. A copy of his testimony is exhibit 24 and part of the minutes. They feel the penalty should be $5,000 rather than $25,000.

KAREN ZACKHEIM, Missoula, spoke in support and a copy of her testimony is exhibit 25 and part of the minutes.

DENNIS LOPACH, Montana Power, spoke as an amender. He read his suggested amendment and a copy of it is exhibit 26 and part of the minutes.

BOB LOHMEYER, Conoco, Billings, spoke neither as a proponent or an opponent. He said they do prefer to deal with state officials rather than the federal.

MARTIN PERGA, Cenex, spoke as an amender. He said on page 5, line 12, the 30 day prenotice has been eliminated--felt it was useful and should be retained.

During questions Rep. Scully suggested all amendments be put in written form by Monday morning.

In closing Rep. Kemmis said since this is granting rule making authority he had prepared a suggested statement of intent (exhibit 27).

Also leaving statements of support as the time did not allow for them to speak were:
Dawn A North, League of Women Voters
Northern Plains Resource Council, exhibit 28.
John Miles, Environmental Information Center, exhibit 29.

Chairman Shelden recessed the meeting at 5:15 p.m.

The Committee reconvened at 7:30 p.m. in room 20 of the Capital Annex, to consider the following bills: All members were present.

HOUSE BILL 684

REPRESENTATIVE BILL HAND, District #82, the chief sponsor, said this is an effort to update the Hard Rock Mining law.

FRANK DUNKLE, Montana Mining Association, introduced the following proponents:

D. L. REBER, Montana Mining Association, said they had met with State Lands people and other citizen groups to discuss possible changes in the Hard Rock laws. He said things they thought unfair and wanted changed were: a small miner might have to build a road to his property--built to state or federal regulations and this road becomes a part of his five acre exclusion; and to be able to work two different mines so they could be employed all year--one mine could be high in the mountains and one in the lowland.

TED DALE, Dillon, Montana Mining Association, said he concurs with what the previous speaker has said on having two mines and the five acre exclusion. A copy of his testimony is exhibit 30 and part of the minutes.

GUY E. MAYCUMBER, Kalispell, Montana Mining Association, said he was a small miner and concurs with Mr. Reber and Mr. Dale.

VICTOR D. WRIGHT, representing self, Triangle Mine and MMA, Superior, said he was one of the small miners that could be major in other operations. He felt some of the regulations of the forest service and state were duplications.

ART ROBERTS, Radersburg, Montana Mining Association, said this bill simplifies the wording of the law so it cannot be as easily misconstrued He said it has more reasonable time limits for the small miner.

CLAUDE O. DALE, Sam Bear Gold Co., Twin Bridges, said he agrees with all that has been said on the bill. He said other people had been present at the afternoon meeting to testify in support. Due to the bill being held over they had been unable to wait. They had signed witness sheets and their names are:

Don C. Detton, Dillon, S.W. Mont. Mining Assoc. and self
John R. Detton, Dillon, S.W. Mont. Mining Assoc. and self
Charles T. Pritchett, S.W. Mining Assoc. and self from Dillon
Jessie Gindici, Montana Mining Assoc., Dillon
Carl Gindici, Dillon, Montana Mining Assoc.
S. E. Whitworth, Dillon, S.W. Montana Mining Assoc. & self

EXECUTIVE SESSION CONT.

HOUSE BILL 716 Rep. Keedy moved that all of the amendments submitted by Rep. Kemmis (see exhibit 2) be adopted, except amendments #3 & #17, and that the word "mail" be stricken in amendments #9 & #10. A vote was taken and the motion carried unanimously with those present. Rep. Spilker then moved to adopt amendments #3 and #17. Discussion followed. Rep. Keedy said that since the federal penalty is $25,000 and if noncompliance penalties are adopted, the federal government can come in and collect the difference. Question was called on the motion and a vote taken. The motion failed with 8 yes and 8 no. Representatives Cooney, Fagg, Huennekens, Keedy, McBride, Metcalf, Scully and Shelden voted no. Representatives Burnett, Iverson and Quilici were absent. Rep. Scully made a motion that HB 716 AS AMENDED DO PASS. A roll call vote was taken and the vote carried with 12 yes and 5 no. Representatives Burnett, Curtiss, Johnston, Spilker and Thoft voted no. Rep. Iverson and Quilici were absent. HB 716 receives a AS AMENDED DO PASS recommendation.

HOUSE BILL 694 Rep. Metcalf went through the amendments presented by Northern Plains Resource Council, the Wibaux Area Council and the Dawson County Farmers Union. A copy of these amendments is exhibit 3 and is part of the minutes. Rep. Day stated that he had no objection to the amendments. Rep. Metcalf moved the amendments (exhibit 3) be adopted. Rep. Scully said he felt a few changes were needed. He explained his suggested changes to the committee. A copy of this is exhibit 4 of the minutes. Rep. Metcalf said the object of these amendments is that the burden of proof be on the applicant and that the question of need should be taken out. Rep. Scully moved to taken it out of the bill. A vote was taken and carried. Mr. Loble's amendment on page 3, line 12, to strike the semicolon and add "unless the board decides that it is in the interest of Montana to permit use outside Montana" was discussed but no motion was made. Rep. Fagg moved the amended amendments (see exhibit 4) be adopted. This motion carried unanimously with those members present. Rep. Fagg moved the bill AS AMENDED DO PASS. Rep. Nathe said this is passing a bill that is giving the authority to the Board of Natural REsources to make the decision within the Yellowstone Compact. Rep. Scully felt the legislature could not give a proper hearing and he felt it proper to have it done before the Board of Natural Resources. The legislature will still have to ratify it. Question was called and a vote taken. The motion carried unanimously with those present. Representatives Iverson and Quilici were absent.

Motion was made and seconded to adjourn.

Meeting adjourned at 4:00 p.m.

Respectfully submitted,

STATEMENT OF INTENT RE: HB 716

The Legislature intends to grant to the Board of Health and Environmental Sciences rulemaking authority to adopt a permit fee schedule. ~~Local air pollution control agencies that assess fees in accordance with these rules shall use the same permit fee schedules~~ AND TO ADOPT A SCHEDULE OF PENALTY ASSESSMENTS FOR NONCOMPLIANCE WITH RESPECT TO ANY SOURCE UNDER SECTIONS 7 THROUGH 15 OF THIS ACT.

First adopted by the HOUSE COMMITTEE ON NATURAL RESOURCES on February 19, 1979.

HB 716

HOUSE BILL NO. 716

INTRODUCED BY BLAYLOCK, KEMMIS, BARDANOUVE, GERKE, DUSSAULT, LORY, McBRIDE, COONEY, JERGESON, SHELDEN, KESSLER, REICHERT

BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE CLEAN AIR ACT OF MONTANA TO GRANT THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES AUTHORITY TO ADOPT RULES REQUIRED BY FEDERAL LAW; TO ISSUE ORDERS PROVIDED FOR BY FEDERAL LAW; TO PERMIT FEES TO BE ASSESSED FOR ENVIRONMENTAL IMPACT ANALYSIS; TO PROVIDE NOTICE AND HEARING IN ACCORDANCE WITH THE MONTANA ADMINISTRATIVE PROCEDURE ACT AND REDUCE TIME REQUIRED FOR NOTIFICATION TO THE AIR POLLUTION ADVISORY COUNCIL; TO CLARIFY THE BOARD'S AUTHORITY TO ADOPT BY RULE A SIMPLIFIED PERMIT SYSTEM FOR AIR CONTAMINANT SOURCES; TO PERMIT FEES TO BE ASSESSED FOR REVIEWING PERMIT APPLICATIONS AND IMPLEMENTING AND ENFORCING PERMIT REQUIREMENTS; TO PROVIDE THAT NOTICE MAY BE GIVEN PERSONALLY OR BY MAIL; ~~TO REVISE AND CLARIFY THE ROLE OF LOCAL GOVERNMENT IN THE CONTROL OF AIR CONTAMINATION~~ TO ESTABLISH NONCOMPLIANCE PENALTY FEES; AND TO INCREASE THE MAXIMUM CIVIL PENALTY FROM $1,000 TO $25,000; AMENDING SECTIONS 75-2-111, 75-2-112, 75-2-205, 75-2-211, 75-2-301, 75-2-401, AND 75-2-413, MCA."



BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-2-111, MCA, is amended to read:

"75-2-111. Powers of board. The board shall:

(1) adopt, amend, and repeal rules ~~implementing and consistent with~~ for the administration, implementation, and enforcement of this chapter, FOR ISSUING ORDERS UNDER AND IN ACCORDANCE WITH 42 U.S.C. 7419, and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant thereto;

(2) hold hearings relating to any aspect of or matter in the administration of this chapter at a place designated by the board. The board may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who shall be present at all hearings and take full stenographic notes of all proceedings thereat, transcripts of which will be available to the public at cost.

(3) issue orders necessary to effectuate the purposes of this chapter;

(4) by rule require access to records relating to emissions;

(5) by rule adopt a schedule of fees required for permits under this chapter;



REFERENCE BILL

[6] HAVE THE POWER TO ISSUE ORDERS UNDER AND IN ACCORDANCE WITH 42 U.S.C. 7419."

Section 2. Section 75-2-112, MCA, is amended to read:

"75-2-112. Powers and responsibilities of department. (1) The department is responsible for the administration of this chapter.

(2) The department shall:

(a) by appropriate administrative and judicial proceedings, enforce orders issued by the board;

(b) secure necessary scientific, technical, administrative, and operational services, including laboratory facilities, by contract or otherwise;

(c) prepare and develop a comprehensive plan for the prevention, abatement, and control of air pollution in this state;

(d) encourage voluntary cooperation by persons and affected groups to achieve the purposes of this chapter;

(e) encourage local units of government to handle air pollution problems within their respective jurisdictions on a cooperative basis and provide technical and consultative assistance for this. If local programs are financed with public funds, the department may contract with the local government to share the cost of the program. However, the state share may not exceed 30% of the total cost.

(f) encourage and conduct studies, investigations, and





research relating to air contamination and air pollution and their causes, effects, prevention, abatement, and control;

(g) determine, by means of field studies and sampling, the degree of air contamination and air pollution in the state;

(h) make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of this state and make recommendations to appropriate public and private bodies with respect to this;

(i) collect and disseminate information and conduct educational and training programs relating to air contamination and air pollution;

(j) advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate and interlocal agencies, the United States, and any interested persons or groups;

(k) consult, on request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control thereof concerning the efficacy of this device or system or the air pollution problems which may be related to the source, device, or system. Nothing in this consultation relieves a person from compliance with this chapter, rules in force under it, or any other provision of law.

(1) accept, receive, and administer grants or other funds or gifts from public or private agencies, including the United States, for the purpose of carrying out this chapter. Funds received under this section shall be deposited in the state treasury to the account of the department.

(3) The department may assess fees TO THE APPLICANT for the analysis of the environmental impact of an application to redesignate the classification of any area, except those areas within the exterior boundaries of a reservation of a federally recognized Indian tribe, under the classifications established by 42 U.S.C. 7470 through 7479 (prevention of significant deterioration of air quality). The determination of whether or not a fee will be assessed is to be on a case-by-case basis."

Section 3. Section 75-2-205, MCA, is amended to read:

"75-2-205. Public hearings on rules. No rule and no amendment or repeal thereof may take effect except after public hearing on due notice and after the advisory council has been given, at ~~least--30--days--before~~ the time of publication, of the proposed text to comment thereon. ~~The~~ Such notice shall be given ~~by-public-advertisement-not--less than--20--or--more--than-30-days-before-the-date-set-for-the public-hearing~~ and any hearing conducted in accordance with the provisions of the Montana Administrative Procedure Act





and rules made pursuant thereto."

Section 4. Section 75-2-211, MCA, is amended to read:

"75-2-211. Permits for construction, installation, alteration, or use. (1) The department shall provide for the issuance, suspension, revocation, and renewal of a permit issued under this section.

(2) Not later than 180 days before construction begins of any machine, equipment, device, or facility which the board finds may directly or indirectly cause or contribute to air pollution or which is intended primarily to prevent or control the emission of air pollutants and not later than 120 days before installation, alteration, or use begins, the owner or operator shall file with the department the appropriate permit application on forms available from the department, and pay to a ~~local government exercising authority under 75-2-301(9) or to the department if such local authority is not exercised~~ a fee sufficient to cover:

(a) the reasonable costs of reviewing and acting upon the application for such permit; and

(b) the reasonable costs of implementing and enforcing the terms and conditions of such permit, if the permit is granted (NOT INCLUDING ANY COURT COSTS OR OTHER COSTS ASSOCIATED WITH ANY ENFORCEMENT ACTION). The fee shall be deposited in an earmarked revenue fund to be used by the department ~~OF-STATE-LOCAL-GOVERNMENT~~ for administration of

this section.

(3) NOTHING IN THIS SECTION SHALL RESTRICT THE BOARD'S AUTHORITY TO ADOPT REGULATIONS PROVIDING FOR A SINGLE AIR QUALITY PERMIT SYSTEM.

~~(3)~~(4) The department may, for good cause shown, waive ~~the--provisions--of--subsection--(2)~~ or shorten the time required for filing the appropriate applications.

~~(4)~~(5) The department shall require that applications for permits be accompanied by any plans, specifications, and other information it considers necessary.

~~(5)~~(6) An application is not considered filed until the applicant has submitted all information and completed all application forms required by subsections (2), (3), and (4). However, if the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

~~(6)~~(7) Where an application for a permit requires the compilation of an environmental impact statement under the Montana Environmental Policy Act, the department shall notify the applicant in writing within 180 days of the receipt of a filed application, as defined in subsection (5), of the approval or denial of the application. However,





where an application does not require the compilation of an environmental impact statement, the department shall notify the applicant in writing within 60 days of the receipt of a filed application, as defined in subsection (5), of the approval or denial of the application. Notification of approval or denial may be served personally or by REGISTERED OR CERTIFIED mail on the applicant or his agent.

~~(7)~~(8) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request, within 15 days after the department renders its decision, upon affidavit setting forth the grounds therefor, a hearing before the board. A hearing shall be held under the provisions of the Montana Administrative Procedure Act.

~~(8)~~(9) The department's decision on the application is not final unless 15 days have elapsed and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board."

Section 5. Section 75-2-301, MCA, is amended to read:

"75-2-301. Local air pollution control programs. (1) A municipality or county may establish a local air pollution control program on being petitioned by 15% of the qualified

electors in its jurisdiction and, if the program is consistent with this chapter and is approved by the board after a public hearing conducted under 75-2-111, may thereafter administer in its jurisdiction the air pollution control program which:

(a) provides by ordinance or local law for requirements compatible with, more stringent, or more extensive than those imposed by 75-2-203, ~~75-2-204, 75-2-211,~~ 75-2-212, and 75-2-402 and rules issued under these sections;

(b) provides for the enforcement of these requirements by appropriate administrative and judicial process; and

(c) provides for administrative organization, staff, financial, and other resources necessary to effectively and efficiently carry out its program.

(2) If the board finds that the location, character, or extent of particular concentrations of population, air contaminant sources, or geographic, topographic, or meteorological considerations or any combination of these are such as to make impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control program, the board may determine the boundaries within which the program is necessary and require it as the only acceptable alternative to direct state administration.





(3) If the board has reason to believe that an air pollution control program in force under this section is inadequate to prevent and control air pollution in the jurisdiction to which the program relates or that the program is being administered in a manner inconsistent with this chapter, the board shall, on notice, conduct a hearing on the matter.

(4) If, after the hearing, the board determines that the program is inadequate to prevent and control air pollution in the jurisdiction to which it relates or that it is not accomplishing the purposes of this chapter, it shall require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

(5) If the jurisdiction fails to take these measures within the time required, the department shall administer within such jurisdiction all of the provisions of this chapter. The department's control program supersedes all municipal or county air pollution laws, rules, ordinances, and requirements in the affected jurisdiction. The cost of the program shall be a charge on the municipality or county.

(6) If the board finds that the control of a particular ~~class of~~ air contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local jurisdiction ~~or may be more efficiently and economically performed at the state level~~ and that the

~~department is better able than the local jurisdiction to control the air contaminant source~~ OR MAY BE MORE EFFICIENTLY AND ECONOMICALLY PERFORMED AT THE STATE LEVEL, it may direct the department to assume and retain control over that ~~class of~~ air contaminant source. No charge may be assessed against the jurisdiction therefor. Findings made under this subsection may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

~~(7) A jurisdiction in which the department administers its air pollution control program under subsection (5) of this section may, with the approval of the board, establish or resume an air pollution control program which meets the requirements of subsection (1) of this section.~~

~~(8) A municipality or county may administer all or part of its air pollution control program in cooperation with one or more municipalities or counties of this state or of other states.~~

~~(9) A municipality or county that is administering an air pollution control program under this section may exercise the following powers:~~

~~(a) The municipality or county may assess and collect noncompliance penalties provided for in [sections 7 through 15] for air contaminant sources under its jurisdiction. All~~





~~noncompliance penalties collected by the municipality or county pursuant to [sections 7 through 15] shall be deposited in a trust and agency account until a final determination and adjustment are made as provided in [section 10] and amounts are deducted by the municipality or county for costs attributable to implementation of [sections 7 through 15] and for contract costs incurred pursuant to [subsection (3) of section 8]x if any. After a final determination is made and additional payments or refunds are made, the remaining penalty money shall be transferred to the general fund of the municipality or county.~~

~~(b) The municipality or county may collect permit fees provided for in 75-2-211.~~"

Section 6. Section 75-2-401, MCA, is amended to read:

"75-2-401. Enforcement. (1) When the department believes that a violation of this chapter or a rule made under it has occurred, it may cause written notice to be served personally or by REGISTERED OR CERTIFIED mail on the alleged violator or his agent. The notice shall specify the provision of this chapter or rule alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is received, the person named requests in writing a hearing

before the board. On receipt of the request, the board shall ~~hold~~ schedule a hearing.

(2) If, after a hearing held under subsection (1) of this section, the board finds that violations have occurred, it shall either affirm or modify an order previously issued or issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other corrective action it considers appropriate. An order issued as part of a notice or after a hearing may prescribe the date by which the violation shall cease and may prescribe time limits for particular action in preventing, abating, or controlling the emissions. If, after hearing on an order contained in a notice, the board finds that no violation is occurring, it shall rescind the order.

(3) Instead of issuing the order provided for in subsection (1), the department may either:

(a) require that the alleged violators appear before the board for a hearing at a time and place specified in the notice and answer the charges complained of; or

(b) initiate action under 75-2-412 or 75-2-413.

~~(4)--Action-under-75-2-412-is-not-a-bar-to--enforcement of--this--chapter--or--of--rules--or-orders-made-under-it-by injunction-or-other-appropriate-remedy;--The-department--may institute--and--maintain--in--the--name--of--the--state--any enforcement-proceedings;~~





~~(4)(5)~~(4) This chapter does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

~~(5)(6)~~(5) In connection with a hearing held under this section, the board may and on application by a party shall compel the attendance of witnesses and the production of evidence on behalf of the parties."

NEW SECTION. Section 7. Persons subject to noncompliance penalties -- exemptions. (1) Except as provided in subsection (2) ~~and-subject-to-collection-by-a local-government-pursuant--to--75-2-301(9)~~, the department shall assess and collect a noncompliance penalty from any person who owns or operates:

(a) a stationary source ~~(OTHER THAN A PRIMARY NONFERROUS SMELTER WHICH HAS RECEIVED A NONFERROUS SMELTER ORDER UNDER 42 U.S.C. 7419)~~ which is not in compliance with any ~~provision--of-[Title-75,-chapter-2]-or-any-rule-adopted or-order-issued-pursuant-to-[Title-75,-chapter--2]~~ EMISSION LIMITATION SPECIFIED IN AN ORDER OF THE BOARD, EMISSION STANDARD, OR COMPLIANCE SCHEDULE UNDER THE STATE IMPLEMENTATION PLAN APPROVED BY THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY;

(b) a stationary source which is not in compliance with an emission limitation, emission standard, standard of

performance, or other requirement under 42 U.S.C. 7411 or 42 U.S.C. 7412; or

(c) any source referred to in subsections (1)~~(b)~~(A) or (1)~~(c)~~(B) which has been granted an exemption, extension, or suspension under subsection (2) or which is covered by a compliance order, OR A PRIMARY NONFERROUS SMELTER WHICH HAS RECEIVED A PRIMARY NONFERROUS SMELTER ORDER UNDER 42 U.S.C. 7419, if such source is not in compliance with any interim emission control requirement or schedule of compliance under such extension, order, or suspension.

(2) Notwithstanding the requirements of subsection (1), the department may, after notice and opportunity for a public hearing, exempt any source from the requirements of [sections 7 through 15] with respect to a particular instance of noncompliance which:

(a) the department finds is de minimus in nature and in duration; or

(B) IS CAUSED BY CONDITIONS BEYOND THE REASONABLE CONTROL OF THE SOURCE AND IS OF NO DEMONSTRABLE ADVANTAGE TO THE SOURCE; OR

~~(b)~~(C) is exempt under 42 U.S.C. 7420(a)(2)(B) of the federal Clean Air Act.

(3) ANY PERSON WHO IS JOINTLY OR SEVERALLY ADVERSELY AFFECTED BY THE DEPARTMENT'S DECISION MAY REQUEST, WITHIN 15 DAYS AFTER THE DEPARTMENT RENDERS ITS DECISION, UPON





AFFIDAVIT SETTING FORTH THE GROUNDS THEREFOR, A HEARING BEFORE THE BOARD. A HEARING SHALL BE HELD UNDER THE PROVISIONS OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT.

NEW SECTION. Section 8. Amount of noncompliance penalty -- late charge. (1) The amount of the penalty which shall be assessed and collected with respect to any source under [sections 7 through 15] shall be equal to:

(a) the amount determined in accordance with the rules adopted by the board, which shall be no less than the economic value which a delay in compliance after July 1, 1979, may have for the owner of such source, including the quarterly equivalent of the capital costs of compliance and debt service over a normal amortization period not to exceed 10 years, operation and maintenance costs foregone as a result of noncompliance, and any additional economic value which such a delay may have for the owner or operator of such source; minus

(b) the amount of any expenditure made by the owner or operator of that source during any such quarter for the purpose of bringing that source into and maintaining compliance with such requirement, to the extent that such expenditures have not been taken into account in the calculation of the penalty under subsection (1)(a).

(2) To the extent that any expenditure under subsection (1)(b) made during any quarter is not subtracted

for such quarter from the costs under subsection (1)(a), such expenditure may be subtracted for any subsequent quarter from such costs. In no event may the amount paid be less than the quarterly payment minus the amount attributed to actual cost of construction.

(3) If the owner or operator of any stationary source to whom notice is issued under [section 11] does not submit a timely petition under [subsection (2)(b) of section 11] or submits a petition which is denied and if the owner or operator fails to submit a calculation of the penalty assessment, a schedule for payment, and the information necessary for independent verification thereof, the department may enter into a contract with any person who has no financial interest in the matter to assist in determining the amount of the penalty assessment or payment schedule with respect to such source. The cost of carrying out such contract may be added to the penalty to be assessed against the owner or operator of such source.

(4) Any person who fails to pay the amount of any penalty with respect to any source under [sections 7 through 15] on a timely basis shall be required to pay in addition a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be equal to 20% of the aggregate amount of such person's penalties and nonpayment penalties with respect to such





source which are unpaid as of the beginning of such quarter.

NEW SECTION. Section 9. Manner of making payment. (1) The assessed penalty required under [sections 7 through 15] shall be paid in quarterly installments for the period of covered noncompliance. All quarterly payments, determined without regard to any adjustment or any subtraction under [subsection (1)(b) of section 8], after the first payment shall be equal.

(2) The first payment shall be due on the date 6 months after the date of issuance of the notice of noncompliance under [section 11] with respect to any source. Such first payment shall be in the amount of the quarterly installment for the upcoming quarter, plus the amount owed for any preceding period within the period of covered noncompliance for such source.

(3) For the purpose of this section, the term "period of covered noncompliance" means the period which begins on the date of issuance of the notice of noncompliance under [section 11] and ends on the date on which such source comes into or, for the purpose of establishing the schedule of payments, is estimated to come into compliance with such requirement.

NEW SECTION. Section 10. Adjustment of fee. (1) The department shall adjust from time to time the amount of the penalty assessment calculated or the payment schedule

proposed by such owner or operator under [subsection (2)(a) of section 11], if the department finds after notice and opportunity for a hearing on the record that the penalty or schedule does not meet the requirements of [sections 7 through 15].

(2) Upon making a determination that a source with respect to which a penalty has been paid under [sections 7 through 15] is in compliance and is maintaining compliance with the applicable requirement, the department shall review the actual expenditures made by the owner or operator of such source for the purpose of attaining and maintaining compliance and shall make a final adjustment within 180 days after such source comes into compliance and:

(a) provide reimbursement with interest to be paid by the state at appropriate prevailing rates for overpayment by such person; or

(b) assess and collect an additional payment with interest at appropriate prevailing rates for any underpayment by such person.

NEW SECTION. Section 11. Notice of noncompliance -- challenge. (1) The department shall give a brief but reasonably specific notice of noncompliance to each person who owns or operates a source subject to [subsection (1) of section 7] which is not in compliance as provided in that subsection, within 30 days after the department has





discovered the noncompliance.

(2) Each person to whom notice has been given pursuant to subsection (1) shall:

(a) calculate the amount of penalty owed (determined in accordance with [subsection (1) of section 8]) and the schedule of payments (determined in accordance with [section 9]) for each source and, within 45 days after issuance of the notice of noncompliance, submit that calculation and proposed schedule, together with the information necessary for an independent verification thereof, to the department; or

(b) submit to the board a petition within 45 days after the issuance of such notice, challenging such notice of noncompliance or alleging entitlement to an exemption under [subsection (2) of section 7] with respect to a particular source.

(3) Each person to whom notice of noncompliance is given shall pay the department the amount determined under [section 8] as the appropriate penalty unless there has been a final determination granting a petition filed pursuant to subsection (2)(b).

NEW SECTION. Section 12. Hearing on challenge. (1) The board shall provide a hearing on the record and make a decision (including findings of fact and conclusions of law) not later than 90 days after the receipt of any petition

under [subsection (2)(b) of section 11] with respect to such source.

(2) If the petition is denied, the petitioner shall submit the material required by [subsection (2)(a) of section 11] to the department within 45 days of the date of decision.

NEW SECTION. Section 13. Deposit of noncompliance penalty fees. All noncompliance penalties collected by the department pursuant to [sections 7 through 15] shall be deposited in an earmarked revenue fund until a final determination and adjustment have been made as provided in [section 10] and amounts have been deducted by the department for costs attributable to implementation of [sections 7 through 15] and for contract costs incurred pursuant to [subsection (3) of section 8], if any. After a final determination has been made and additional payments or refunds have been made, the penalty money remaining shall be transferred to the state general fund.

NEW SECTION. Section 14. Effect of new standards on noncompliance penalty. In the case of any emission limitation, emission standard, or other requirement approved or adopted by the board under [Title 75, chapter 2] after [the effective date of this act], AND APPROVED BY THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY AS AN AMENDMENT TO THE STATE IMPLEMENTATION PLAN, which is more stringent than





the emission limitation or requirement for the source in effect prior to such approval or promulgation, if any, or where there was no emission limitation, emission standard, or other requirement approved or adopted before [the effective date of this act], the date for imposition of the noncompliance penalty under [sections 7 through 15] shall be the date on which the source is required to be in full compliance with such emission limitation, emission standard, or other requirement or 3 years after the approval or promulgation of such emission limitation or requirement, whichever is sooner.

NEW SECTION. Section 15. Effect of noncompliance penalty on other remedies. (1) Any orders, payments, sanctions, or other requirements under [sections 7 through 15] shall be in addition to any other permits, orders, payments, sanctions, or other requirements established under [Title 75, chapter 2] and shall in no way affect any civil or criminal enforcement proceedings brought under 75-2-412 or 75-2-413.

(2) The noncompliance penalties collected pursuant to [sections 7 through 15] are intended to be cumulative and in addition to any other remedies, procedures, and requirements authorized by [Title 75, chapter 2].

Section 16. Section 75-2-413, MCA, is amended to read:

"75-2-413. Civil penalties -- out-of-state litigants

-- effect of action. (1) Any person who violates any provision of this chapter or any rule enforced thereunder or any order made pursuant thereto AND AFTER NOTICE THEREOF HAS BEEN GIVEN BY THE DEPARTMENT shall be subject to a civil penalty not to exceed ~~$1,000~~ ~~$25,000~~ $10,000. Each day of violation shall constitute a separate violation. The department may institute and maintain in the name of the state any enforcement proceedings hereunder. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty. The civil penalty is in lieu of the criminal penalty provided for in 75-2-412.

(2) (a) Action under subsection (1) of this section is not a bar to enforcement of this chapter or of rules or orders made under it by injunction or other appropriate civil remedies.

(b) An action under subsection (1) or to enforce this chapter or the rules or orders made under it may be brought in the district court of any county where a violation occurs or is threatened if the defendant cannot be located in Montana.

(3) Moneys collected hereunder shall be deposited in the state general fund."

Section 17. Codification. It is intended that sections





7 through 15 be codified as an integral part of Title 75, chapter 2, part 4, and the provisions of Title 75, chapter 2, apply to sections 7 through 15.

Section 18. Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 19. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-